IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8174 OF 2006

1. Sunil Venkatesh Kulkarni)
   Age : 42 yrs. Occ. Agri.,)

2. Anil Venkatesh Kulkarni)
   Age : 37 yrs., Occ.Agri)

3 Sou.Sulochana Venkatesh Kulkarni)
   Age : 65 yrs. Occ. Agri)

   All R/o Bhose, Tal.Pandharpur)
   Dist. Solapur)..Petitioners

Versus

1. Ramchandra Rangnath Zunjurde)
   Age : 70 yrs. Occ. Agri)
   R/o. Tembhurani Road,Kurduwadi)
   Tal.Madha, Dist. Solapur)

2. Vijay Shivratan Laomate)
   Age : 32 yrs. Occ. Agri)

3. Venkatesh Dnyaneshwar Kulkarni)
   Age : 70 yrs. Occ. Agri)

4. Vithal Babu Maske)
   Age.: 50 yrs. Occ. Agri)

5. Pandurang Maruti Maske)
   Age.: 50 yrs. Occ. Agri)

   All R/o. Bhose, Tal.Pandharpur)
   Dist. Solapur)..Respondents

Mr.S.S.Salunke for the petitioners.

Mr.Ajay A.Joshi for respondent no.1.

Coram : S.A.Bobde,J

Date : 13.07.2007.

Judgment :-

1. Rule, returnable forthwith. Heard by consent.

2. The petitioners are the original plaintiffs. They applied for an injunction restraining the defendant nos.4 & 5 from obstructing their possession on Gat no.1076-A 1/2. This injunction was granted by the Joint Civil Judge, Junior Division, Pandharpur. Aparently, the defendant nos.4 & 5 thereafter sold the property. Admittedly, there is no injunction restraining them from selling the suit property.

3. Against the injunction restraining them from obstructing the possession of the petitioners the said defendants who are respondent nos.1 & 2 filed an appeal. The appellate Court has vacated the injunction order. At this juncture, it may be noted that the petitioners' case is that the suit property was sold by the respondent no.3 Venkatesh Kulkarni i.e. their father through respondent nos.1 & 2 and that the father was not entitled to sell the suit property. After the injunction was granted by the trial Court the respondent nos.1 & 2 who had purchased the property from respondent no.3 have sold the same to a stranger who is admittedly not a party to the suit. It is therefore, the contention of the learned Counsel on behalf of the petitioners that the respondent nos.1 & 2 were not entitled to file an appeal having lost any right title or interest in the suit land after they sold the

property to a stranger. This argument cannot be accepted in view of the fact that the respondent nos.1 & 2 had been injuncted by the trial Court from disturbing the possession of the plaintiffs i.e. the petitioners, certainly any person against whom the Court has passed the order of an injunction, is entitled to file an appeal to have such an injunction vacated. The Lower Appellate Court has vacated the injunction inter-alia on the ground that the respondent no.1 was in peaceful possession of the suit land and that he has purchased 2 pieces bearing land Block No.1076/A/1/2 and 1076/A/2 each admeasuring 1-H 21-R. The appellate Court has come to the conclusion that there is reason to believe that the present suit is filed only to harass the purchaser. The learned Counsel for the petitioners further submitted that the appellate Court has not given the finding that the petitioners are not in possession and therefore, the petitioners must be said to be in possession and the petitioners' possession ought to have been protected. There is no merit in this contention in view of the observation of the appellate Court that Hanumant More was put in possession of the suit land in pursuance of the registered sale deed. In this view of the matter, there is no merit in this petition. The petition stands dismissed.

(S.A.Bobde,J)